

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 552 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PATEL RANCHHODBHAI MULJIBHAI THRO' HEIRS

Versus

STATE OF GUJARAT

Appearance:

MR AMIT C NANAVATI for Petitioners
Mr.K.G. Sheth, AGP, for the respondents3

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 16/03/2000

ORAL JUDGEMENT (Per: Kadri, J.)

1. Petitioners, whose land situated in village Bor Timba, Taluka Bayad, came to be acquired for the public purpose of 'Modasa-Kapadwanj-Nadiad Railway Yojna', have filed this petition challenging the order dated October 29, 1999 passed by respondent No.3, rejecting the application filed by the petitioners under Section 28-A of the Land Acquisition Act, 1894 ('Act' for short). By the impugned order, respondent No.3 rejected application filed by the petitioners on the ground that notification under Section 4 of the Act was issued prior to coming into force Amendment Act 68 of 1984 and, therefore, the application filed by the petitioners under Section 28A of the Act was not maintainable.

2. The petition is resisted by respondent No.3 by filing affidavit in reply, inter alia, contending that notification under Section 4 of the Act was published on July 13, 1980, and possession of the acquired lands was taken long back. The Land Acquisition Officer had passed award under Section 11 of the Act on March 31, 1981 and the petitioners had filed their application under Section 28-A of the Act on May 7, 1999. It is stated that the Amendment Act came into force on September 24, 1984, i.e. after the issuance of notification under Section 4(1) of the Act and also after making of the award by the Land Acquisition Officer. In substance, it is submitted that when the notification under Section 4(1) of the Act was published and when the award was made by the Land Acquisition Officer, the provision of Section 29-A was not on the statute and, therefore, the petitioners cannot file application for redetermination of compensation and the petition be dismissed.

3. We have heard learned counsel for the petitioners and learned Assistant Government Pleader, Mr. K.G. Sheth for the respondents.

4. It is not in dispute that the land of the petitioners situated in village Bor Timba, Taluka Bayad, came to be acquired by notification under Section 4(1) of the Act on July 17, 1980 for the public purpose of Modasa-Kapadwanj-Nadiad Railway Yojna. The Land Acquisition Officer had made his award on March 31, 1981, and other land owners had filed reference applications under Section 18 of the Act for enhancement of compensation in the District Court, Sabarkantha, at Himatnagar, being Land Acquisition Reference Nos.2686 of 1989 to 2690 of 1989 and the said reference applications came to be disposed of by the Reference Court by its judgment and award dated March 24, 1999. The petitioners, who had not filed reference applications

under Section 18 of the Act, had submitted their applications under Section 28-A of the Act for redetermination of market value of the land under acquisition in view of the judgment and award of the Reference Court dated June 7, 1999 in Land Acquisition Reference Nos.2686 of 1989 to 2690 of 1989.

5. The contention of learned Assistant Government Pleader that, as notification under Section 4(1) of the Act was issued on July 17, 1980 and the award of the Land Acquisition Officer was made on March 31,1981, i.e. prior to coming into force the Amendment Act 68 of 1998, by which Section 28A was introduced for the first time on the Statute, the application filed by the petitioners under Section 28 of the Act is not maintainable, deserves to be rejected. The Supreme Court, in the case of Babu Ram vs. State of U.P., reported in (1995) 2 Supreme Court Cases 689, has ruled that, where award under Section 11 of the Act was made prior to September 24, 1984, but the Reference Court determined higher compensation on or after September 24, 1984, persons interested in other lands covered by the same notification would be entitled to apply for redetermination of compensation under Section 28-A of the Act. In view of the pronouncement of the Supreme Court in the case of Babu Ram (supra), we are of the opinion that the impugned order dated October 29, 1999 passed by respondent No.3 produced at Annexure "E" deserves to be quashed and set aside.

6. In the result, the petition is allowed. The impugned order dated October 29, 1999 passed by respondent No.3 produced at Annexure "E" is quashed and set aside. Respondent No.3 is directed to decide the application filed by the petitioners under Section 28 of the Act within three months from today. With the aforesaid direction, rule is made absolute with no order as to costs.

(swamy)